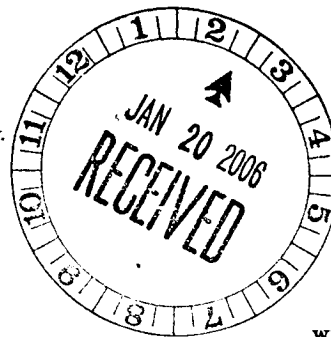


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215615

January 20, 2006

BY HAND DELIVERY

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W., Room 711  
Washington, DC 20423-0001

Re: Docket No. 42091, Arizona Public Service Company  
and PacifiCorp v. The Burlington Northern and  
Santa Fe Railway Company

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding please find an original and ten (10) copies of the Motion to Dismiss with Prejudice of Arizona Public Service Company and PacifiCorp.

Please date stamp the extra copy of this filing and return it to our messenger.

Respectfully submitted,

*C. Michael Loftus by ASK*

C. Michael Loftus  
An Attorney for Arizona Public Service  
Company and PacifiCorp

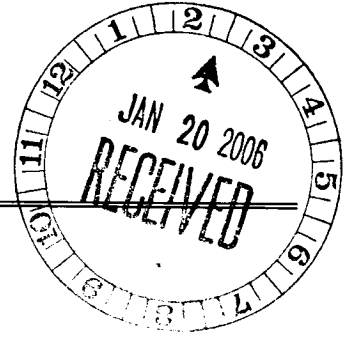
ENTERED  
Office of Proceedings

Part of  
Public Record

Enclosures

cc: Samuel M. Sipe, Jr., Esq.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



ARIZONA PUBLIC SERVICE COMPANY )  
400 North 5th Street )  
Phoenix, AZ 85004, and )

PACIFICORP )  
825 N.E. Multnomah Street )  
Portland, OR 97232 )

Complainants, )

v. )

Docket No. 42091

THE BURLINGTON NORTHERN AND )  
SANTA FE RAILWAY COMPANY )  
2500 Lou Menk Drive )  
Forth Worth, Texas 76131 )

Defendant. )

**MOTION TO DISMISS WITH PREJUDICE**


Complainants Arizona Public Service Company and PacifiCorp  
(collectively "APS/PacifiCorp") hereby move that the Board dismiss this proceeding with  
prejudice.

APS/PacifiCorp filed their Complaint initiating this action on December 17,  
2004, and simultaneously moved that the Board hold this proceeding in abeyance pending  
the outcome of APS/PacifiCorp's effort to seek judicial review of the Board's decisions  
in Docket No. 41185, Arizona Public Service Co. and PacifiCorp v. The Burlington  
Northern and Santa Fe Ry. (Decisions served May 12, 2003, October 14, 2003, and

December 13, 2004). APS/PacifiCorp and Defendant, BNSF Railway Company (as successor to The Burlington Northern and Santa Fe Railway Company) have settled the dispute underlying both Docket No. 41185 and the instant docket. In accordance with the terms of the parties' settlement, APS/PacifiCorp hereby move that the Board dismiss the instant complaint proceeding with prejudice.

Respectfully submitted,

ARIZONA PUBLIC SERVICE COMPANY  
and PACIFICORP

By: C. Michael Loftus   
Frank J. Pergolizzi  
Andrew B. Kolesar III  
Peter A. Pfohl  
Kendra A. Ericson  
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OF COUNSEL:

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Dated: January 20, 2006

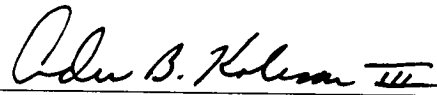
Attorneys for Complainants

## CERTIFICATE OF SERVICE

I hereby certify, that I have this 20th day of January, 2006 caused to be served copies of this Motion as follows:

Michael E. Roper, Esq. (by overnight courier)  
Senior General Counsel  
BNSF Railway Company  
2500 Lou Menk Drive  
Fort Worth, TX 76131-2828

Samuel M. Sipe, Jr., Esq. (by hand)  
Steptoe & Johnson  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036

A handwritten signature in black ink, reading "Andrew B. Kolesar III" with a stylized flourish at the end.

Andrew B. Kolesar III  
An Attorney for Complainants